

Instrument prepared by

VIRGINIA GAS AND OIL BOARD

Order recorded under:

CODE OF VIRGINIA
§ 45.1-361.26

BEFORE THE VIRGINIA GAS AND OIL BOARD

**RELIEF
SOUGHT:**

An Order for Disbursement of Escrowed Funds
(and Authorization for Direct Payment of Royalties)

JURISDICTION:

Code of Virginia § 45.1-351. (et seq) AND § 45.1-361.22 (et seq) AND § 45.1-361.22:2

UNIT/WELL NAME: CBM Unit A-41

TRACT(S): 1

LOCATION: BUCHANAN County, Virginia

DOCKET NUMBER: VGOB-06-1114-1794-01

APPLICANTS:

ARP Mountaineer Production, LLC on behalf of Derek Browning Rogers, Gregory Poulos,
Jason Poulos, Kevin Rogers, Pamela Poulos, Shaun Rogers, Talmage G. Rogers, III

HEARING DATE AND LOCATION:

Russell County Government Center, Lebanon, Virginia
October 20, 2015

APPEARANCES:

Tim Scott on behalf of ARP Mountaineer Production, LLC

PRIOR PROCEEDINGS:

1. Original Pooling Order Executed 02/23/2007, Recorded on 02/27/2007, Deed Book/Instrument No. 70000716.
2. Supplemental Order, Recorded on 06/03/2015, Deed Book/Instrument No. 1500000881.

NOTICE:

The Unit Operator gave notice to the Applicants that the Board would consider its disbursement petition at the October 20, 2015 hearing and considered whether to:

- (1) Amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tract(s) 1 identified in the attached petition.

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(2) Delete the requirement that the Unit Operator place future royalties attributable to Tract(s) 1 relative to the interests of the Applicants identified in the attached petition.

(3) Close the escrow account under this docket number.

FINDINGS: Code of Virginia § 45.1-361.22 AND § 45.1-361.22.2

Applicant has certified and represented to the Board that:

T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Gregory Poulous, Jason Poulous, and Pamela Poulous is entitled to 100% of the CBM royalties awarded under Buchanan County, Virginia Circuit Court Case No. 550-13, Opinion dated July 10, 2014, said decision allows the Applicant and Designated Operator to pay royalties directly to the person(s) identified in Exhibit EE annexed hereto and the annexed Table, further, specified how said royalties are to be paid.

There are no more remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

RELIEF GRANTED:

VGOG Disbursement

Unit CBM Unit A-41

VGOB-06-1114-1794-01

Table 1

Tracts: 1

VGOB Disbursement Unit CBM Unit A-41							
VGOB-06-1114-1794-01							
Table 1							
Tracts: 1							
Item	Tract	Disbursement Table	Fractional Ownership	Net Acreage Ownership	Royalty Split	Escrowed Acres	Percent of Escrowed Funds
			in Tract	in Tract	Agreement	Disbursed	Disbursed
		Total acreage in escrow before disbursement				13.10700	
1 Tract 1 (total acreage)			52.30				
1	1	Talmage G. Rogers, III\3014 Shalford Lane Matthews; NC 28104		1.6343	100.00%	1.6343	12.4689%
2	1	Derek Browning Rogers\2300 Carmel Road; Charlotte; NC 28226		1.6343	100.00%	1.6343	12.4689%
3	1	Kevin Rogers\139 Wickham Rd; Garden City; NY 11530		1.6343	100.00%	1.6343	12.4685%
4	1	Shaun Rogers\121 NE 100th Street; Miami Shores; FL 33138		1.6343	100.00%	1.6343	12.4685%
5	1	Gregory Poulos\1894 Gleenwood Street NE; Palm Bay; FL 32907		2.1900	100.00%	2.1900	16.7086%
6	1	Jason Poulos\40670 SW 95th Street; Miami; FL 33176		2.1900	100.00%	2.1900	16.7086%

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DONE AND EXECUTED this 21 day of October, 2015 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

DONE AND PERFORMED this 21 day of October, 2015 by Order of the Virginia Gas and Oil Board.



Rick Cooper
Principal Executive to the
staff, Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA
COUNTY OF RUSSELL

Acknowledged on this 21 day of October, 2015, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the staff of the Virginia Gas and Oil Board, that they executed the same and was authorized to do so.


Sally Settle Ketron, Notary Public
7623162

My Commission expires: January 31, 2019



BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: ARP Mountaineer Production, LLC

DIVISION OF GAS AND OIL

DOCKET NO: VGOB 06-1114-1794-01

RELIEF SOUGHT: (1) DISBURSEMENT FROM ESCROW REGARDING TRACT(S) 1 (2) AND
AUTHORIZATION FOR DIRECT PAYMENT OF ROYALTIES

HEARING DATE: October 20, 2015

DRILLING UNIT: CBM Unit A-41

BUCHANAN COUNTY, VIRGINIA

PETITION FOR ORDER OF DISBURSEMENT OF ESCROW FUNDS

1. Petitioner and its counsel

Petitioner is ARP Mountaineer Production, LLC, Park Place Corp Center One, 1000 Commerce Drive, Pittsburgh, PA 15275, 412-489-0006. Petitioner's counsel is Tim Scott, McKinnis & Scott Law Firm, 135 W. Main St., Kingsport, TN 37660.

2. Relief Sought

The disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tract 1, as depicted upon the annexed table; and, (2) authorization to begin paying royalties directly to the parties to the prevailing plaintiffs; Talmage G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos and Pamela Poulos. Unit A-41.

3. Legal Authority

Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

4. Type of Well(s)

Coalbed Methane

5. Factual basis for relief requested

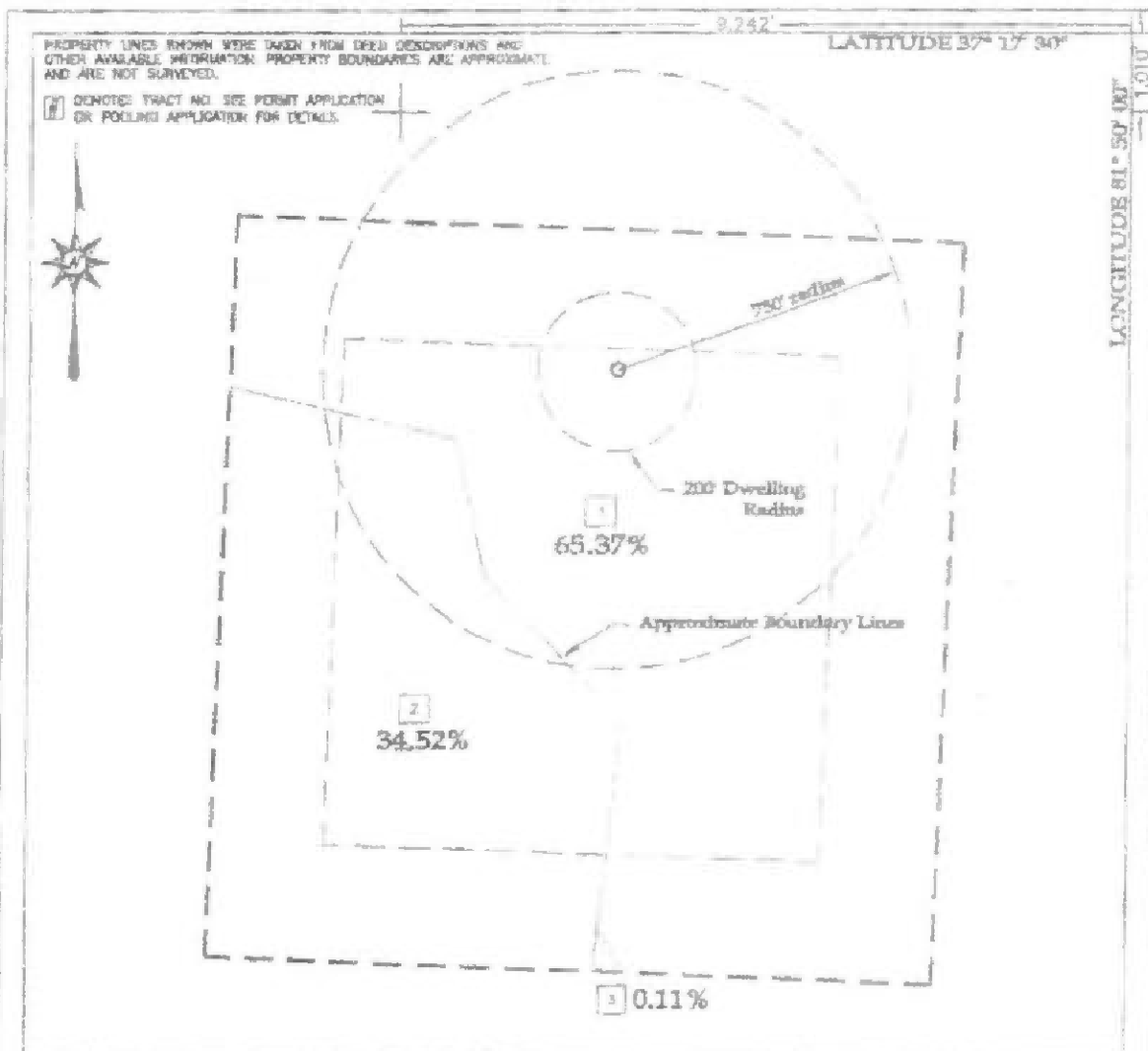
T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos is entitled to 100% of the CBM royalties awarded under Buchanan County, Virginia Circuit Court Case No. 550-13, Opinion dated July 10, 2014, said decision allows the Applicant and Designated Operator to pay royalties directly to the person(s) identified in Exhibit EE annexed hereto and the annexed Table, further, specified how said royalties are to be paid.

There are no more remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

6. Attestation

The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

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WELL LOCATION PLAT

COMPANY: GEOMET OPERATING COMPANY WELL NAME OR NUMBER: ROGERS 269-CBM UNIT A-41

TRACT NUMBER: LBR HOLDINGS, LLC (TRACT NO. 55) SCALE: 1" = 400' DATE: 9/29/06

COUNTY: BUCHANAN DISTRICT: NORTH GRUNDY QUADRANGLE: BRADSHAW

ELEVATION: METHOD USED TO DETERMINE ELEVATION: G.P.S. CONTROL LOCATED

FROM JEWELL SMOKELESS COAL CO. & TEE ENGINEERING CO. CONTROL POINTS

THIS IS A NEW PLAT ☐ ; AN UPDATED PLAT ☐ ; OR A FINAL LOCATION PLAT ☐

POOLING PLAT ☒

- + Denotes the location of a well on United States Topographic Maps, scale 1 to 24,000, 1:250,000 and longitude lines being represented by border lines as shown.
- Denotes approximate proposed well location.

Form LGO-GO-2
Rev. 1/88

[Signature]
Licensed Professional Engineer or Licensed Land Surveyor (After Seal)

EXHIBIT A

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Well Name Rogers 269 A-41

Pooling Plat Attachment A

Plat Tract Number	Owners	Percentage Ownership
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1) 56	<u>LBR Holdings, LLC</u>	<u>65.37%</u>
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2) 78	<u>Pocahontas Mining, LLC</u>	<u>34.52%</u>
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3) 69	<u>Pocahontas Mining, LLC</u>	<u>0.11%</u>
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Location Description 3.70 Miles northwest of State Route 635 jct W/ State Route 638
and 1.80 miles northwest of State Route 638 W/State Route 616.

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EXHIBIT E
LIST OF CONFLICTING AND UNKNOWN OR UNLOCATABLE OWNERS/CLAIMANTS THAT REQUIRE
ESCROW
UNIT A-41

VOGB DOCKET NO. 06-1114-1794-01

NONE.

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EXHIBIT EE
UNIT A-41
VOGB DOCKET NO. 06-1114-1794-01
List of Respondents with Royalty Split Agreements or Court Orders

	PERCENTAGE OWNERSHIP OF TRACT IN DISPUTE	PERCENTAGE OWNERSHIP OF UNIT IN DISPUTE
<u>Tract 1-(52.30 Acres)</u>		
<u>(65.37%)</u>		
<u>LBR Holdings, LLC et al.</u>		
<u>Tr. No. 56</u>		
COAL FEE OWNERSHIP		
LBR HOLDINGS, LLC		
Fon Rogers, Manager		
P.O. Box 22427		
Lexington, KY 40522	25.000000%	n/a
Total-Coal	25.000000%	n/a
OIL & GAS OWNERSHIP		
Jason Poulos		
10870 SW 95 th Street		
Miami, FL 33176	4.166667%	2.723750%
Gregory Poulos		
1894 Glenwood Street NE		
Palm Bay, FL 32907	4.166667%	2.723750%
Pamela Poulos		
5000 SW 83 rd St.		
Miami, FL 33143	4.166666%	2.723750%
T.G. Rogers, III		
3014 Shalford Lane		
Matthews, NC 28104	3.125000%	2.042812%
Shaun Rogers		
121 NE 100 th St.		
Miami Shores, FL 32960	3.125000%	2.042812%
Kevin Rogers		
139 Wickham Road		
Garden City, NY 11530	3.125000%	2.042813%
Derek Browning Rogers		
2300 Carmel Road		
Charlotte, NC 28226	3.125000%	2.042813%
Total - Gas	25.000000%	16.342500%

Subtotal Tract 1	25.000000%	16.342500%
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Total Percentage Ownership of Unit in Dispute Tract 1: 16.342500%

VIRGINIA: IN THE CIRCUIT COURT OF BUCHANAN COUNTY

GREGORY G. POULOS, JASON G. POULOS,
PAMELA F. POULOS, SHAUN D. ROGERS,
KEVIN H. ROGERS, DEREK B. ROGERS and
T.G. ROGERS, III,

Plaintiffs,

v.

LBR HOLDINGS, LLC,

Defendant.

Case No. 550-13

ORDER

This matter, having come before the Court for hearing on June 2, 2014, on the parties' respective motions for summary judgment, and the Court, having reviewed the written submissions of the parties and having heard oral argument of counsel, and for good cause shown, hereby ORDERS:

1. Plaintiffs' Complaint and Defendant's Counterclaim both request that this Court, pursuant to Virginia Code § 8.01-184, declare their respective rights under the May 27, 1938, deed ("Deed") attached to Plaintiffs' Complaint as Exhibit "A."

2. The Deed includes a conveyance by T. G. Rogers and Martha F. Rogers, his wife (the "Talmage Rogers Group"), and Lloyd Rogers and Anne F. Rogers, his wife (the "Lloyd Rogers Group"), of their interests in certain parcels of property in Buchanan County, Virginia, (the "Property") and McDowell County, West Virginia, to Lon B. Rogers. The Deed specifically recites: "But there is excepted from the above-described property an undivided one-half interest in the oil and gas under said property and the same is reserved to T. G. Rogers and Lloyd Rogers,

parties of the first part, their heirs and assigns, together with the usual and necessary rights of ingress and egress and drilling rights to explore, get and remove said oil and gas.”

3. It is undisputed that Plaintiffs are the successors to the interests of the Talmage Rogers Group under the Deed, and that Defendant, LBR Holdings, LLC (“LBR”), is the successor to the interests of Lon B. Rogers and the Lloyd Rogers Group under the Deed.

4. Plaintiffs seek a declaration that the Deed’s reservation of gas under the Property includes, *inter alia*, coalbed methane gas, and that they are, therefore, the owners of 25% of the coalbed methane gas under the Property and entitled to the associated royalties. LBR, on the other hand, seeks a declaration that the Deed’s reservation of gas under the Property does not include coalbed methane gas, that the Deed, therefore, conveyed coalbed methane gas to Lon B. Rogers, and that LBR, as Lon B. Rogers’ successor-in-interest, is the owner of all the coalbed methane gas under the Property and entitled to the associated royalties.

5. Having examined the reservation language and the “four corners” of the Deed, the Court finds that the Deed is unambiguous and that the Deed’s reservation of “the oil and gas under said property” includes a reservation of coalbed methane gas under the Property. Plaintiffs are, therefore, entitled to prevail as a matter of law.

6. Coalbed methane gas is obviously “gas,” see *Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d at 234, 238 (Va. 2004) (coalbed methane “is a gas”); and there is nothing in the Deed that removes coalbed methane or any other type of gas from the scope of the reservation. The language at issue is unlimited, plain, and unambiguous.

7. LBR argues that “the oil and gas” does not mean “all” but only “some” gas. The Court agrees with Plaintiffs, however, that the reservation of “the” gas is not a limited reservation of only some types of gas, but an unambiguous and unlimited reservation of all gas. Such an

interpretation of "the" is in accordance with the ordinary, plain and common sense meaning of the word.

8. LBR also argues that the parties to the Deed would not have intended to include coalbed methane gas in the reservation because, according to LBR, the commercial value of coalbed methane was not known in 1938. LBR presented no evidence in support of this argument and Plaintiffs presented undisputed evidence to the contrary. Regardless, this Court is bound to uphold the unambiguous reservation language, which refers to gas without qualification or limitation, and which, as written, encompasses all types of gas, whether commercially exploitable at the time of the Deed's execution or not.

9. The Court concludes that the arguments and authorities presented by Plaintiffs in their motion and reply brief are well-founded and correct. A ruling in LBR's favor would require the Court to rewrite the Deed, which it will not do. Nor will the Court torture words and phrases or engage in speculation to create an ambiguity where the ordinary meaning of the words leaves no room for ambiguity.

10. There are no issues of material fact in dispute regarding Plaintiffs' ownership of 25% of the coalbed methane gas under the Property. The Court grants Plaintiffs' motion for summary judgment in full and denies LBR's motion for summary judgment in full.

11. This Order constitutes a judicial determination of coalbed methane gas ownership as between Plaintiffs and LBR pursuant to Virginia Code § 45.1-361.22(5)(i) and resolves in Plaintiffs' favor all conflicting claims of coalbed methane gas ownership between Plaintiffs and LBR relating to the Property.

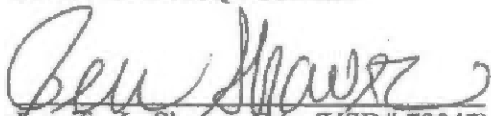
12. Plaintiffs are entitled to receive all coalbed methane gas royalties attributable to their 25% gas estate interest in the Property that are being held in the Virginia Gas and Oil Board's

escrow account or otherwise being withheld from Plaintiffs due to the conflicting claims of coalbed methane ownership between Plaintiffs and LBR. Plaintiffs are also entitled to receive all future coalbed methane gas royalties or other proceeds that are attributable to their 25% gas estate interest in the Property. All such royalties and proceeds shall be divided among the individual Plaintiffs in accordance with their respective percentages of ownership.

SO ORDERED, this the 10th day of July, 2014.


Circuit Court Judge

SEEN AND REQUESTED:




Jennifer L. Shaver, Esq. (VSB# 79047)
Ellis Professional Building, Suite A
211 West Main Street
Abingdon, VA 24210
Telephone: (276) 525-1103
Facsimile: (276) 525-1112
jen@jenshaver.com

Counsel for Plaintiffs

SEEN AND OBJECTED TO FOR ALL THE REASONS DETAILED IN LBR HOLDINGS, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND AT THE HEARING; AND ON THE ADDITIONAL GROUNDS THAT TO THE EXTENT THE COURT MAY HAVE CONSIDERED SUBMISSIONS OF EXHIBITS OTHER THAN THE DEED AT

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ISSUE, THE COURT SHOULD HAVE DENIED BOTH PARTIES' MOTIONS FOR SUMMARY JUDGMENT SO THAT BOTH PARTIES WOULD HAVE HAD AN OPPORTUNITY TO DEVELOP AND PROPERLY INTRODUCE SUCH EVIDENCE:


Trevor L. Earl, Esq. (VSB# 37573)
REED WEITKAMP SCHELL & VICE PLLC 
500 West Jefferson Street, Suite 2400
Louisville, KY 40202
Telephone: (502) 589-1000
Facsimile: (502) 562-2200
tearl@rwsvlaw.com

Counsel for LBR Holdings, LLC

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INSTRUMENT #150001734
RECORDED IN THE CLERK'S OFFICE OF
BUCHANAN COUNTY ON
OCTOBER 27, 2015 AT 11:57AM

BEVERLY S. TILLER, CLERK
RECORDED BY: GGB